# MIAMIBEACH

## **Special City Commission Meeting**

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive May 20, 2013

Mayor Matti Herrera Bower Vice-Mayor Jonah Wolfson Commissioner Jorge R. Exposito Commissioner Michael Góngora Commissioner Jerry Libbin Commissioner Edward L. Tobin Commissioner Deede Weithorn

Absent

City Manager Jimmy L. Morales City Attorney Jose Smith City Clerk Rafael E. Granado

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#### ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach, entitled "Lobbyists," requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's Office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

Special note: In order to ensure adequate public consideration, if necessary, the Mayor and City Commission may move any agenda item to the alternate meeting date, which will only be held if needed. In addition, the Mayor and City Commission may, at their discretion, adjourn the Commission Meeting without reaching all agenda items.

Meeting called to order at 9:37:04 a.m.

## **REGULAR AGENDA**

## **R9 - New Business and Commission Requests**

R9A Discussion On The Boardwalk.

(City Manager's Office)

## 9:37:38 a.m.

Jimmy L. Morales, City Manager, stated that the members of the City Commission should have before them a City Manager's Memorandum, and they will hear today a presentation prepared by the Public Works and Panning Departments to explain the issues on this subject. There is also a City Attorney's Memorandum addressing some of the legal issues. What is missing, unfortunately, is the letter from the Florida Department of Environmental Protection (DEP), which the City has not received. Kevin Crowder had conversations with the DEP Secretary; the conversation has been along the lines of what we are discussing, and hopefully the DEP's position will be that City will not be required to remove the boardwalk, but be allowed to maintain it and repair it. However, the DEP has yet to state so in writing. Eric Carpenter, Public Works Director, prepared the first half of the memorandum, and will walk the Commission through the analysis. Maybe we can achieve some compromise with the legal issues.

Eric Carpenter, Public Works Director, gave a brief synopsis of the history of the boardwalk. He added that maintenance cost of the boardwalk is \$55.00 per linear foot, as compared to \$3.70 per linear foot for the beachwalk. Mr. Carpenter stated that staff has identified four potential alternatives for the boardwalk, including the option approved by the Commission to construct a raised beachwalk.

## Options:

- 1. Continuing to maintain the existing boardwalk.
- 2. Widening the existing boardwalk, (it is 12 feet wide); not wide enough to accommodate bicycles and pedestrians at the same time. We have to look at the potential of widening it. The City might have some constraints as far as the amount of property that is available.
- 3. Removing the existing boardwalk and replacing it with a beachwalk, which has been the direction the City has been taking.
- 4. Removing the boardwalk and raising the grade before constructing a beachwalk.

Richard Lorber, Acting Planning Department Director, made a presentation and stated that this issue was discussed at the Finance and Citywide Projects Committee. The Planning Department has been looking at the bigger picture of this issue, and analyzed the projects that are coming forward that are associated with that area. Several large hotel projects have been approved in that corridor that are in favor of the construction of a beachwalk.

2301 Collins Avenue - The Perry One Hotel, or formerly known as The Rodney, which is redoing the entire backyard.

2901 Collins Avenue - The Seville Marriott project. This very large project has had many approvals, and is ready to pull their last permit from the State.

3301 Collins Avenue - The Saxony Hotel.

3425 Collins Avenue – Versailles Hotel.

Mr. Lorber stated that the Seville, the Saxony and the Versailles projects are all pending approvals. The design is a grade level beachwalk and the City Attorney can explain later about pending and potential litigation. The pulling of permits for these hotels is expected imminently, and therefore there may be legal issues and liabilities.

3651 Collins Avenue - Ocean Grande. This project was not required to build a beachwalk, but is obligated to provide a monetary contribution.

4101 Collins Avenue – Crown Hotel, has been approved, but has not started, so the project may be modified.

4441 Collins Avenue - The Fontainebleau Hotel. The boardwalk still exists, and it has not been permitted for demolition.

4585 Collins Avenue – Eden Roc Hotel. The boardwalk has been demolished, and the beachwalk is being installed.

Mr. Lorber explained that the Planning Department staff has examined the various segments of the proposed beachwalk, and has made the following preliminary conclusions:

- 1. From 24th Street (starting just north of the Gansevoort/Perry, at Riviera Tower Condo) to 29th Street just south of the Seville, ending at the Triton Towers Condo), the City could propose to keep the wooden boardwalk if desired, and still maintain connectivity, as there is roadway, Miami Beach Drive, which is parallel and contiguous to this section of boardwalk. Bicycle traffic (Atlantic Greenway Network) could be easily routed from the end of the paved beachwalk at 24<sup>th</sup> Street over to Miami Beach Drive. The wooden boardwalk can be retained between 24th and 29th. This area is overwhelmingly Condo apartments, and the City would be able to accommodate some of the residents in this area that like the wooden boardwalk. It would be a five block stretch of undisturbed wooden boardwalk that they can walk on, see the ocean, etc. (This plan presupposes that The Perry/One Hotel is permitted to proceed with their pending permit to remove the section of the boardwalk from behind their property and construct the atgrade beachwalk. Otherwise, there would be no access to the beginning of Miami Beach Drive at 24<sup>th</sup> Street.) Staff has been informed that the Collins Park Neighborhood Association has taken a similar position in favor of connecting the beachwalk to 24th Street and Miami Beach Drive.
- 2. For those projects from 29th Street north to 36th Street, The Seville, Saxony and Versailles projects are all pending approval for their projects in the very near future, and will be delayed significantly if plans need to be revised to reverse policy and scrap the installation of a beachwalk and the retention of the boardwalk. The adjacent land uses are primarily hotels and new hotel/condo projects; permitting these previously approved projects to go forward as planned will not affect the large concentration of apartment residents further north and south. Staff recommends allowing the beachwalk to proceed in this stretch, in order to avoid the prospect of litigation with these pending projects, and with the knowledge that this area is primarily hotels and not residential apartments.
- 3. North of 36th Street, the Ocean Grande project has proffered a monetary contribution to the beachwalk project, but no construction is required. Farther north, the Fontainebleau has also proffered a beachwalk, but no action on this proffer is imminent. In contrast, the Eden Roc has already commenced the demolition of the boardwalk behind their property and the parking lot to the north. Staff would propose that the Fontainebleau project that has not yet been started be allowed to be put on hold, while the Eden Roc project, which is underway, be allowed to be completed.
- 4. Regarding future segments, it is recommended that a pilot application be forwarded to the State for the segment from 36th Street to the end of the 47th Street parking lot, which would reflect the desires expressed previously, i.e., raised to provide better views, some cushioning substance built in to the materials to provide a softer running surface, and wide enough to accommodate both walkers and bicycles. Through this mechanism, it can be determined what the State will permit, as well as allowing further research to arrive at an improved design that achieves the stated goals.

The Planning Department staff believes that this is a fair compromise. It would permit the group of residents between 24th and 29th to have their existing wooden boardwalk remain, it would maintain the bicycle connectivity required to implement the City's long term mobility vision, it would permit the hotel projects to move forward without requiring major redesigns or sparking litigation, it keeps at least fairly large segments of each facility without piecemealing it too much, and it would put the longer term possibilities in the hands of the State regulators, and allow the City time to design a more raised beachwalk that could accommodate walking and biking with a view of the ocean.

Jimmy L. Morales, City Manager, restated the proposed alternatives:

- 1. Maintain the boardwalk from 24<sup>th</sup> to 29<sup>th</sup> Streets.
- 2. Remove the boardwalk from 29<sup>th</sup> to 36<sup>th</sup> Streets and replace it with the beachwalk.
- 3. Maintain the boardwalk from 36<sup>th</sup> Street through the Fontainebleau Hotel 47<sup>th</sup> Street. There is no bicycle alternative. If it is the will of the Commission, we could look into a pilot approval for widening it.

Commissioner Weithorn requested to expand the security patrol to include the Miami Beach Drive section so the residents will feel comfortable that we have bike patrols in that area. **Eric Carpenter and Chief Martinez to handle.** 

Discussion held.

Mayor Bower stated that the biggest complain she gets from the condominium residents in the area is that the bicycles get into the boardwalk and it is scary and dangerous. This is the number one complaint she receives. The no bicycles on the boardwalk regulations need to be enforced, and bicycles must be kept out. **Code Enforcement to handle.** 

Commissioner Libbin stated that they should hear from the public today to find out how they feel. He added that he wants to keep as much of the boardwalk as possible, and he will find out what challenges that brings. However, under no circumstances can he grasp of merging bicycles and pedestrians on the boardwalk. He will not be in favor of expanding the boardwalk to include bicycles because he thinks it is a disaster to try to have both there.

Commissioner Góngora stated that he is frustrated because at the Land Use and Development Committee last month, he heard for the first time that the boardwalk did not have to come down. This is what they were told by the Administration; now that information is not accurate, and we could maintain the boardwalk. We have a difficult dilemma because some hotels have spent dollars on the beachwalk project. Commissioner Góngora asked what is going to happen during the construction phase while they put the beachwalk, and where is the public going to go?

Eric Carpenter, Public Works Director, responded that there will be a temporary pathway for pedestrian the same as for a construction project. It will be routed to a public right of way area.

Discussion continued.

Jose Smith, City Attorney, stated that there is always a hard pack path for people to use; this is what the City has done in the past as a temporary accommodation.

Discussion continued.

Commissioner Góngora stated that the benches on the boardwalk are important; if we go the route the Administration recommends, will there be a seating shaded area in the beachwalk?

Eric Carpenter, Public Works director, stated that is not in the plans, but could be worked out if the City Commission requests it.

Commissioner Góngora stated the he requests a sitting shade area on the boardwalk. Eric Carpenter to handle.

Discussion continued.

Commissioner Góngora asked what we are doing north of the Eden Roc, to connect the missing piece.

Eric Carpenter, Public Works Director, stated that they are in the design phase, which will be completed on 2014.

Elizabeth Wheaton, Environmental Resources Management, explained.

Commissioner Góngora stated that rather than focusing on tearing down the boardwalk, the City should focus on completing the missing piece and adding the amenities.

Commissioner Libbin stated that what was agreed on was that future boardwalk must be elevated.

Commissioner Tobin stated that they do not have a policy to let the dunes grow and spread. He suggested getting the policy in place to allow the dunes to spread, and to be maintained and protected. He added that when anybody gives an opinion, they should sign an affidavit, because he would like to hold people accountable when giving an opinion. They need to do this in a businesslike manner, especially when making decisions based on opinions. He asked the City Manager to assign staff to stay on top of the boardwalk application process in Tallahassee. City Manager's Office, City Attorney's Office and Eric Carpenter to handle.

The following individuals spoke:

Mark Gellman

Marianne Weber, Club Atlantis member, read a letter from the committee members in support of keeping the boardwalk.

Barbara Benis

Gustavo Tapanes, Triton Towers

Barbara Carter

Ray Breslin, Collins Parks Homeowners Association member

Jose Vilarello, Regional Director of the Continental Group

Ira Giller and showed a presentation

Tzvi Boganilsky

Michael Larkin Esq., representing the Marriott Seville project

Esteban Porcelli

Kent Harrison Robbins Esq., representing the Setai and the Rodney Hotels

Brian Adler representing The Perry One Hotel

Tim Nardi

Maria Fernandez

Steve Bogamilsky

Jim Richmond

Sydney Cohen

Ken Bereski

Douglas Elliman

Debra L. Quade presented over 80 emails of residents from 23 to 24 Streets in support of removing the boardwalk

Gina Stevens

Bill De Graff

Tammy Lopez

Jimmy L. Morales, City Manager, stated that from his perspective there are two hot decision points, and requested guidance from the City Commission.

- 1) The pending request for demolition permit, and he has no legal basis to deny this right now since the requestors have followed all the City's requirements.
- 2) The Perry One has been issued an order by the Historic Preservation Board requiring the demolition of the boardwalk.

Mr. Morales stated that from a staff perspective, they can get direction on other matters later and go back to the State for additional guidance, but these two issues are most important.

Commissioner Weithorn asked as to why they are speaking regarding a pending lawsuit in public, rather than at a Closed Executive Session.

Jose Smith, City Attorney, commented that the City Attorney's Office fully endorses the City Manager's proposal. It is legally defensible and it will keep the City from wasting money defending a case it cannot win. His office has never been shy about defending the City in litigation and we have prevailed repeatedly, particularly against large developers. He added that the legal suit was filed last Friday, and he has not had a chance to review the merits or the potential damages. He rather not discuss it, but there are legal issues to consider, not just from The Seville, but also from other hotels that are vested and are grandfathered under the Code.

Discussion continued.

Commissioner Góngora stated that he would like to preserve the boardwalk to the extent we are allowed under the law. He is not in favor of voting on permits today, because he has not heard a good plan for the residents today.

Discussion continued.

Mayor Bower asked why they tear the boardwalk before they have a plan. She added that there should be a plan in place, and all the permits in place, so the minute the boardwalk comes down construction can start. **Eric Carpenter to handle.** 

Discussion continued.

James P. Wurst, architect for The Seville Hotel project, explained the pedestrian walkway during the construction.

Brian Adler stated that they will work with the City to make sure there is s pedestrian walkway during construction.

Discussion continued.

#### MOTION #1:

Commissioner Libbin stated that we need to accept that we messed up. We had the impression that we did not have a choice. The hotels acted on our suggestions and we were wrong, but that does not mean we compound the error. He would like to do the following:

1. Direct Administration to reach out to the affected parties and determine the impact of the damages. City Attorney's Office to handle.

2. The right thing is to preserve the boardwalk; he directed Administration to go meet and learn exactly what is at stake. He separated The Perry One Hotel; as he sees no problem with that block, and it seems that there is consensus with the residents and the Collins Park neighborhood. He suggested issuing permits to do that one block, and open up the option for the Miami Beach Drive. He requested, as he recommended at the Land Use and Development Committee, to find a way to have a separate bicycle path, perhaps running parallel to be exclusive to the bikes. It is ridiculous to mix pedestrians, bicycles, Segways, and even motorcycles. That is a disaster. If possible, the separated bicycle path should be elevated as well. There is no reason the bicyclist should ride in the canyon.

## **Commissioner Libbin summarized his motion:**

1) Move forward with the 24<sup>th</sup> and 25<sup>th</sup> Streets; 2) Have the Administration meet with the affected parties and come back to tell this Commission what the damages are.

Commissioner Weithorn stated that The Perry would solve the bicycle problem. We had some problems in that section. She actually was hit there once. She likes what Commissioner Libbin suggested, because it does take some of the bicycle safety issues out. She stated that she would second the motion if we can piece meal it to that section up to the 29th Street section retaining the boardwalk to 29<sup>th</sup>, and take down The Perry.

## **Summary:**

Take down The Perry (23<sup>rd</sup> to 24<sup>th</sup> Streets) Keep the boardwalk from 24<sup>th</sup> to 29<sup>th</sup> Streets

#### MOTION #1:

Moved by Commissioner Libbin to take down the boardwalk from 23<sup>rd</sup> to 24<sup>th</sup> streets, seconded and amended by Commissioner Weithorn, and keep the boardwalk from 24<sup>th</sup> to 29<sup>th</sup> Streets.

Commissioner Weithorn stated that we have to ask the State what they are going to permit. We have to do the formal request in writing because every time we have a new governor or a change in administration they tell us new things, and until we do a formal request for the elevated pathway and do something real instead of talking about it, we have no idea what DEP will do. They will not put anything in writing until we have a formal request. No voice vote was taken.

Commissioner Weithorn motion for the City do a formal request for an elevated pathway to see if the State (DEP) allows it. No second offered and no voice vote taken. **City Manager's Office and Eric Carpenter to handle.** 

Mayor Bower asked that we need to know what form of elevation will be used.

Commissioner Weithorn stated that the City staff will need to work with DEP and maybe they will need to do two applications to see which one will be allowed, and also the City should see if DEP will give us a timeframe. Commissioner Weithorn stated that she has seen those applications take up to two years. She also has concerns about the lighting. The last time she talked with DEP, they were concerned about turtle nesting and how high the lighting could go. When City staff speaks with DEP, please make sure to ask where the lighting can go. City Manager's Office and Eric Carpenter to handle.

Commissioner Tobin stated that he has seen a less than aggressive effort in some of the projects, and asked the City Manager to look at the policies and procedures as to why it takes so long. Commissioner Tobin stated that oftentimes he has seen that the applications submitted by the City to DEP are incomplete or contain mistakes. He requested that somebody is assigned to aggressively work on this and take ownership. **City Manager's Office to handle**.

Discussion continued.

Jimmy L. Morales, City Manager, stated that this is what the City will be asking the State:

- 1. Does the City have to remove the boardwalk?
- 2. Can the City repair and maintain the boardwalk?
- 3. Can the City expand or widen the boardwalk?

The verbal answers received are that we do not have to remove the boardwalk, and we can repair it, but with the expansion, we have to go through normal permitting process, which could take months.

Discussion continued.

## 11:59:50 p.m. RESTATED MOTION

Commissioner Libbin restated his motion is to take down the block behind The Perry 23rd to 24th, and 24<sup>th</sup> to 29<sup>th</sup> keep the boardwalk; seconded by Commissioner Weithorn. No voice vote.

Commissioner Tobin requested the cost of what is being proposed in the motion. He added that if we are doing this block by block, and as different blocks of residents decide to come out and come to these meetings, then we are going to continue to alter the construction schedule that we set up. He asked what will happen from 29<sup>th</sup> to 36<sup>th</sup> Streets.

Discussion continued.

Commissioner Exposito stated that the business people have gone through the process and have complied with the specific requirements imposed by the City. We are rather forced to allow them to complete that project. Where the City could save the boardwalk, he would like to save it. One lady said it is all about the view, segregate bicycles and pedestrians, the homeless problem, maintaining the cost. We are voting on many things without having all the answers in terms of the cost, the maintenance, whether it can be maintained or simply needs to be redone. Concerning some of the businesses that are building, can we have a conversation with the parties? Is there any way there can be a change in terms of the design criteria of the beachwalk to elevate it somewhat to include some shade structure, additional seating? That will make it more palatable to our constituents. Now, if he had to vote, he would vote to allow The Perry to move forward. We need to speak to somebody at the State level and ask how to solve the problems we are having. We must memorialize the conversation so the conversation stays as a record of what transpired. He stated that we are voting on something without knowing the answers such as the cost, the bicycles, the homeless, etc. He suggested allowing the process at different boards, and in moving forward answer these questions so we can make appropriate decisions.

Commissioner Góngora stated that we need to know what to do with The Seville and he is not rushing this.

Discussion continued.

## **FINAL MOTION #1**

Commissioner Libbin restated his motion is to take down the block behind The Perry from 23rd to 24<sup>th</sup> Streets; keep the boardwalk from 24<sup>th</sup> to 29<sup>th</sup>; seconded by Commissioner Weithorn. Roll call; 4-1; Opposed: Mayor Bower and Commissioner Góngora; Absent: Vice Mayor Wolfson. Note: Mayor Bower changed her vote. Final Voice-vote 5-1. (Clerk's Note: See page 9 for the Mayor's vote change.)

Discussion held.

#### MOTION #2:

Motion by Commissioner Weithorn to 1) Call for an Executive Session on the boardwalk before we do anything further, at that time the motion just approved could be discussed, and if necessary remove it. She clarified that not on this but for the rest of the boardwalk she would like an Executive Session on the legal aspects and the merit of the suits. 2) The Administration to make an application to the State for an elevated pathway, so we can finally get an answer as to what we can do. We need a written answer from the State.

Commissioner Libbin seconded the motion but wanted clarification. He stated that he had mentioned that the Administration reach out to the affected parties in regards to what the liabilities are.

Commissioner Weithorn stated clarification would be received at the Executive Session.

Jose Smith, City Attorney, stated that the only proper subject for an Executive Session is the pending lawsuit filed by The Seville Hotel, and that is the only thing that we are allowed to discuss.

#### Amendment to Motion #2:

Commissioner Libbin offered an amendment to Commissioner Weithorn's motion to allow the Administration to reach out to the affected parties.

Commissioner Weithorn approved the amendment and Commissioner Libbin seconded the amended motion.

Commission Tobin requested somebody, besides Kevin Crowder, call Tallahassee and speak to the Governor to get answers. He requested if one of the residents could help. He requested that the plans be proofread, to ensure accurateness, before they are sent to Tallahassee. **Eric Carpenter to handle.** 

Discussion continued.

Commissioner Weithorn stated that unless we make a formal application we will not get anything in writing and reaching out calling somebody will not work.

## **FINAL MOTION #2**

Motion made by Commissioner Weithorn; seconded as amended by Commissioner Libbin to:

- Call for an Executive Session on the boardwalk on the legal aspects and the merit of the lawsuit
- Administration to make an application to the State for an elevated pathway
- Obtain a written answer from the State
- Administration to reach out to the affected parties in regards to what the liabilities are.

Voice vote taken: 6-0; Absent: Vice-Mayor Wolfson.

#### Change of Vote on Motion #1:

Mayor Bower changed her vote on the first motion to favor the motion; but added that she does not like doing it by piece meal.

Michael Larkin, Esq., spoke.

Discussion continued.

Ira Giller spoke.

Jimmy L. Morales, City Manager, asked for direction whether or not to grant the permit pending the Executive Session.

Discussion continued.

Commissioner Góngora stated that the Executive Session should be scheduled at the June 5 Commission Meeting.

Commissioner Tobin stated that this Executive Session will be in private and the people will not be able to hear it.

Mayor Bower asked if we could have the Executive Session before June 5<sup>th</sup>.

Jose Smith, City Attorney, stated that the Executive Session could be next week.

Discussion continued.

Jimmy L. Morales, City Manager, announced that a Special Finance and Citywide Projects Committee meeting will be held Wednesday, May 22, 2013 at 3:00 p.m. on the Third Floor Training Room at the 1755 Meridian Avenue building.

Mayor Bower stated the Executive Session could be held prior to the commencement of the Special Finance and Citywide Projects Committee meeting this Wednesday, at 2:00 p.m. City Attorney's Office to handle. Rafael E. Granado to notice.

Discussion continued.

Jose Smith, City Attorney, stated that the main thing that needs to be analyzed is the cost, and this needs to be done by the City Manager. City Manager's Office to handle.

Jimmy L. Morales, City Manager, clarified that his direction is not to issue any permits pending this discussion.

Mayor Bower stated that that is right and called the meeting adjourned.

Commissioner Tobin stated that there was no motion to adjourn the meeting and he has more questions. He asked if a vote will be called to decide whether to hold the permit. He will be voting "no."

Discussion continued.

Commissioner Tobin asked if after the Executive Session whatever is decided should be on the agenda for the June 5, 2013 City Commission meeting.

Mayor Bower stated that yes it will be on the June 5<sup>th</sup> agenda.

Meeting adjourned at 12:30:57 p.m.

Handouts and Reference Materials:

- Memorandum from City Attorney Jose Smith, Dated May 17, 2013, Regarding Seville Acquisition, LLC ("Seville") v. City of Miami Beach, Case No.: 13-17539-CA-01, Eleventh Judicial Circuit, Miami-Dade County, Florida
- Seville Acquisition, LLC ("Seville") v. City of Miami Beach, Case No.: 13-17539-CA-01, Eleventh Judicial Circuit, Miami-Dade County, Florida – Seville Acquisitions, LLC'S Emergency Complaint for Writ of Mandamus
- 3. Seville Acquisition, LLC ("Seville") v. City of Miami Beach, Case No.: 13-17539-CA-01, Eleventh Judicial Circuit, Miami-Dade County, Florida Appendix to Seville Acquisitions, LLC'S Emergency Complaint for Writ of Mandamus
- 4. Letter from Collins Park Neighborhood Association dated May 13, 2013, signed by Ray Breslin
- 5. Numerous emails from The Roney Palace Condominium Association, Inc., Reference the boardwalk
- Letter from the Riviera Condominium Association, Inc., received May 20, 2013, regarding the " Removal of Elevated boardwalk."
- 7. Sign in Sheet for May 20, 2013 (2 pages)
- 8. Miami Herald Advertisement of May 19, 2013
- 9. Miami Herald Advertisement of May 16, 2013